

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 25, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 96-3446

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

GEORGE M. DEBRUIN AND THERESA M. DEBRUIN,

PLAINTIFFS-APPELLANTS,

v.

TOWN OF ASHIPUN BOARD OF REVIEW,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dodge County:
DANIEL W. KLOSSNER, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

EICH, C.J. George DeBruin appeals from a judgment dismissing his challenge to the 1994 property tax assessment on his home in the Town of Ashippun. He argues that the assessment resulted in a “discrepancy” between the value of residential property and agricultural property in the Town in violation of the uniformity-of-taxation clause of the Wisconsin Constitution and, alternatively,

that proper assessment procedures were not followed in valuing his property. We reject both arguments and affirm the judgment.

The facts are not in dispute. DeBruin owns a house on approximately 5.25 acres of land in the Town of Ashippun. In May 1994 he received a notice from the Town stating that his assessment, which was \$85,600 in 1993, was being increased to \$126,200—\$29,700 for the land and \$96,500 for the improvements—for 1994. He objected to the assessment, claiming that it discriminated against residential property by giving preferential treatment to agricultural parcels. The Town Board of Review dismissed his objection, and he brought a certiorari action challenging its decision. The circuit court ordered the board to reconvene and hold further hearings on DeBruin’s objections, which it did.

In his testimony at the reconvened hearing, DeBruin presented his own calculations of the value of his property based on the “cost” approach, the same method the Town assessor, Erma Franke, used in her initial assessments.¹ DeBruin’s calculations yielded a value of \$6,488 for the land and \$51,367 for the improvements—although he acknowledged that the replacement value of the improvements is listed at \$99,000 for insurance purposes.

Franke also testified. After listing her qualifications, she explained her method of assessing residential and agricultural property in the Town. She stated that she had been notified by the Department of Revenue (DOR) that the

¹ An assessor using the cost approach first estimates the value of the site by one or more alternative means, and then estimates the cost of reproducing the improvements on the site today. Then, deducting the estimated loss in value, or depreciation, of the improvements, the assessor arrives at the value of the property—the sum of the value of the site and the net value of the improvements. 1 WISCONSIN PROPERTY ASSESSMENT MANUAL, 8-12 (1997).

assessments of residential and agricultural land in the town were exhibiting discrepancies—residential property was undervalued in violation of § 70.05, STATS., which requires that each class of property within a taxation district be valued within plus or minus 10% of its market value at least once in the past four years. According to the DOR notice, residential properties (land and improvements) in the Town of Ashippun were valued at only 83.96% of their market value, while agricultural properties (land and improvements) were at 95.22% of market value.

In order to bring the assessments into compliance with the statute, Franke, using the cost approach, applied DOR’s 1994 “local modifier” of 1.323 to calculate all 1994 residential assessments.² With respect to agricultural property, which, as indicated, was overvalued compared with residential property, Franke continued to use the 1993 local modifier of 1.011. The result was that, after her 1994 assessment, “everybody [was brought] back into compliance residential ... at 102%, commercial at 104% ... [and] agricultural ... at 99[%] for an overall [rate] of 101.82[%].” Franke stated that she used the increased residential modifier to bring “residential properties into compliance” with § 70.05, STATS.

Franke also testified that she had personally inspected DeBruin’s property after her initial cost-based assessment. She described the property in considerable detail, providing the Board with photographs and diagrams. In addition, she provided information on several sales of local property that, she said,

² As indicated, assessors using the cost approach must estimate the replacement cost of individual residences. In doing so, they may consult the “Dwelling Pricing Schedule” in the MANUAL, which is supplemented each year by a compilation of local modifiers prepared by DOR to reflect the annual rise in building costs. *See* 2 MANUAL, at 4-57 to 4-63, A-31. The modifiers are intended to provide a reliable estimate of the replacement cost of residential improvements throughout the state.

were comparable to DeBruin's and verified and "justified" her own figures. During the hearing, DeBruin extensively cross-examined Franke. At the conclusion of all the testimony, the board confirmed Franke's assessment of DeBruin's property.

DeBruin commenced a second certiorari proceeding, raising the same arguments as before and asking the court to declare the 1994 assessment null and void and to appoint its own assessor to reassess all property in the Town. The Town moved for summary judgment, claiming that its assessment complied with all relevant laws. The court granted the motion and dismissed DeBruin's action.

On appeal, DeBruin renews his constitutional challenge to the assessment and also claims that it violated state law because it was not based on the best information available and not undertaken pursuant to accepted assessment methods.

I. The Constitutional Challenge

The "uniformity clause," Article VIII, § 1, of the Wisconsin Constitution, requires that the method or mode of taxing real property be applied uniformly to all classes of property within the taxing district. *State ex rel. Hensel v. Town of Wilson*, 55 Wis.2d 101, 106, 197 N.W.2d 794, 796 (1972). A taxpayer may mount a uniformity challenge to the assessment of his or her property, even though the assessment is based on the property's fair market value, if—as DeBruin appears to claim here—the assessments of other taxpayers are based on an undervaluation of their property. *Noah's Ark Family Park v. Village of Lake Delton*, 210 Wis.2d 302, 313, 565 N.W.2d 230, 235 (Ct. App. 1997).

As indicated, DeBruin's constitutional claim is that Franke's use of the higher local modifier for residential property and the lower modifier for farms resulted in an improper discrepancy between residential and agricultural assessments. According to DeBruin, by using the lower modifier for agricultural property, Franke transferred the burden of property taxation from farmers to owners of residential property.³ We disagree.

Neither the uniformity clause nor the equal protection clause requires that every citizen pay the same tax. Rather, the rule is that "when property is the object of taxation, it should all alike, *in proportion to its value*, contribute towards paying the expense of [local government]." *Hensel*, 55 Wis.2d at 106, 197 N.W.2d at 796 (quoting *Knowlton v. Supervisors of Rock County*, 9 Wis. 378, [*410], 388 [*420] (1859)) (emphasis added).

DeBruin does not dispute DOR's 1993 determination that the residential properties in the Town were valued at more than 15% below equalized value. Thus, at that time (and, presumably, in prior years as well), owners of residential property were paying a disproportionately lower share of property taxes than owners of agricultural property. DeBruin has not persuaded us that Franke's assessment—regardless of her methods—resulted in nonuniformity in the 1994 assessed values of residences and farms in the Town. To the contrary, it would appear from the record that the 1994 property assessment in the Town was far more uniform than in preceding years.

³ DeBruin also claimed that Franke had used the lower modifier of 1.011 for three of his neighbors' residential properties. Franke explained, however, that the lower modifier was applied because those properties were classified as agricultural, not residential, parcels.

II. Other Challenges

DeBruin next challenges his assessment on grounds that it was not based on the “best information available to the assessor,” as required by § 70.32(1), STATS.⁴

The “best information” of the value of real property “is a sale of the property or if there has been no such sale then sales of reasonably comparable property.” *Rosen v. City of Milwaukee*, 72 Wis.2d 653, 662, 242 N.W.2d 681, 685 (1976) (quoting *State ex rel. Markarian v. City of Cudahy*, 45 Wis.2d 683, 685, 173 N.W.2d 627, 629 (1970)). If no such information is available, other factors considered relevant to the determination of market value “include costs, depreciation, replacement value, income, ... location and occupancy, ... amount of insurance carried, ... and appraisals procured by the owner.” *Id.* at 663, 242 N.W.2d at 685. It is true, as DeBruin asserts, that Franke’s initial assessment was based on the “secondary” factors discussed in *Rosen* and similar cases. But, as we have discussed above, Franke testified before the board on the details of several sales of property she stated were comparable to DeBruin’s and, based on those sales, she concluded that her initial figures constituted a correct valuation of the property. She was questioned at length with respect to these sales by both DeBruin and members of the board, and the board accepted her conclusion.

An assessor’s valuation is presumed to be correct and will not be set aside without evidence showing it to be incorrect. *Dempze Cranberry Co. v. Bd. of Review of Biron*, 143 Wis.2d 879, 884, 422 N.W.2d 902, 904 (Ct. App. 1988).

⁴ Section 70.32(1), STATS., provides: “Real property shall be valued ... in the manner specified in the Wisconsin property assessment manual ... from actual view or from the best information that the assessor can practicably obtain....”

Nor will we disturb the findings of a board if the evidence favoring the assessment furnishes a substantial basis for the valuation. *Id.* As indicated, DeBruin limited his own testimony as to valuation on cost-based factors, and he presented no evidence to dispute Franke’s testimony on comparable sales. We are satisfied that the board could, as it did, accept Franke’s testimony that her subsequent examination of comparable sales verified her initial valuation of DeBruin’s property—even if that initial valuation was erroneously based on “secondary,” rather than the “best,” evidence of value under § 70.32(1), STATS. Because we so hold, it becomes unnecessary to consider DeBruin’s various challenges to Franke’s use of the cost method.⁵

⁵ DeBruin first challenges Franke’s use of the “Cost and Design Factor”—an aid set forth in the MANUAL to assist the assessor, using the cost method, to consider the “quality grade of materials and workmanship” in a particular residence, as that factor might affect its replacement cost. See 2 MANUAL, at 4-1, 4-4. His argument, however, is largely undeveloped, and the underlying factual assertions are unsupported by references to the record. We do not consider arguments that are undeveloped or supported by only general statements, and not accompanied by citations to the factual record. See *State v. Pettit*, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992). Beyond that, we note that the MANUAL permits the assessor to increase the rating “[i]f the subject building is judged to be of a better or inferior quality than these ... grade levels.” 2 MANUAL, at 4-3.

DeBruin also argues that Franke misused another MANUAL aid, the “CDU Rating System.” The argument is unavailing. As explained in the MANUAL, the system is designed to assist the assessor, again using the cost method, in estimating depreciation. In the words of the MANUAL:

[It] establishes eight rating classifications ranging from excellent to unsound, with accompanying definitions of the observed physical condition of the building, and its degree of desirability and usefulness for its age and type. A residual table (Basic Per Cent Good Table), which is used in conjunction with the CDU Rating Guide, is also provided. This will indicate the appropriate residual for a structure, based upon its condition, desirability, and usefulness as observed by the assessor.

1 MANUAL, at 8-10.

(continued)

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

DeBruin complains that while the CDU ratings for buildings the age of his residence (eleven to twenty years old) range from 40% to 90%, Franke used a rating of 95%. Franke testified that she used the 95% CDU figure for most residences in the Town because she knew from her own observations that older homes were selling at essentially the same prices as newer homes. Additionally, the MANUAL states that the CDU table, based on a weighted average of parcel samples taken throughout the state, “is meant to be used as a guide only. It may or may not be an accurate measure for each municipality.” 2 MANUAL, at 7-4. Given her testimony, we do not see Franke’s deviation from the CDU table as fatal to her assessment of residential property in the Town.

